



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

DEPARTMENT OF HUMAN SERVICES

ANN SILVERBERG WILLIAMSON
Executive Director

MARK L. BRASHER
Deputy Director

LANA STOHL
Deputy Director

DATE: February 23, 2017
TO: Mark D. Andrews, Office of Legislative Research and General Counsel
Office of the Executive Director, 195 North 1950 West, Salt Lake City, Utah 84116
telephone (801) 538-4001 facsimile (801) 538-4016 www.hs.utah.gov
FROM: Ann Silverberg Williamson
RE: **Utah Legislature's Commission on Federalism**

It is our understanding that the Utah Legislature's Commission on Federalism is developing a resolution that will involve three aspects of public policy recommendations:

- a. broad, philosophical beliefs about the proper role of the federal government in the delivery of public services and the regulation of private and commercial activities;
- b. specific federal activities that could be handled more efficiently, effectively, or, for other reasons, more appropriately at the state or local government level (or not at all); and
- c. specific recommendations for federal statutory and regulatory changes that would return policy prerogatives to state and local government or at least result in better outcomes for the citizens of Utah.

The Department of Human Service (DHS) advances work that provides safe care and sustainable, positive outcomes for children, youth, families and individuals in need of protective and family strengthening

services, recovery services (child support), juvenile justice services, services to people with behavioral health (substance use and mental illness) challenges, public guardian needs, services for people with disabilities, as well as aging and adult services. Here is our response in the order of the three areas of focus by the Commission.

a. Philosophical beliefs about the proper role of the federal government –

As championed by our Governor, we believe in and uphold the 10th Amendment and are committed to taking the lead and finding solutions tailored to the unique challenges and circumstances of our constituency.

Utah's DHS has been a national leader with innovative practices that recognize the efficiency and effectiveness of whole person and multigenerational family centered practice. We have used federal waivers and private partnerships to advance what we believe is the best way to meet human needs in a coordinated manner as locally as possible so that individuals can thrive in their own homes, schools, and communities.

Our work is centered on safely maintaining children with their parents rather than have them enter state's custody and utilizing data, research and evidence-based practices to divert low risk youth from the juvenile justice system while also reducing recidivism. Furthermore, through multi-sector partnerships, we have individuals with disabilities and individuals with mental health and substance use disorder needs increasingly self-directing their community based care and increasing connections to the workforce.

b. Specific federal activities that could be handled more appropriately at the state level –

None at this time.

c. Specific recommendations for federal statutory or regulatory changes to achieve better outcomes for Utah –

Addressing the **federal financing of child welfare** remains an essential priority. With our IV-E Waiver from the federal government, set to expire in September 2018, Utah has been able to demonstrate the efficiency and effectiveness of in-home services that keep children safely with their families or kin rather than the costly and traumatizing experiences of separating families when children are in state custody. Many elements of Senator Hatch's Family First Prevention Services Act would be sound ways to reform federal statute allowing states to achieve better outcomes through earlier intervention. Utah specifically would benefit by the federal government authorizing states' use of federal IV-E dollars for child abuse and neglect prevention care and treatment services. Restricting states' use of the federal dollars only for services to children in state custody has perverse incentives and costly implications, not only in dollars but moreover with poor outcomes that result in multi-generational cycles of dependence on government.

The **social services block grant (SSBG) funding** from Congress provides \$22M annually to support Utah's state and county human services. In recent years, the U.S. House has voted to eliminate SSBG – largely on the premise that there is too much flexibility given and authority held by the states in determining the best use for the funds. Reinforcing the recommendation for IV-E finance changes above, it is noteworthy that \$16M of the \$22M annual SSBG funds are invested in services for thousands of children experiencing abuse or neglect. The balance of the dollars in Utah fill gaps for

evidence-based services where prescriptive Medicaid and other funding sources do not allow spending, such as on respite care, behavioral health care for the uninsured, database security and investigation costs. The specific recommendation is that the federal government not eliminate a financial source that is being handled appropriately and efficiently with accountability at the state and local government levels; moreover, not to act in this way without concurrently reforming the structure of IV-E and similarly Medicaid.

As Utah's health reform task force co-chairs shared with congressional leadership in previous correspondence, we echo the recommendation for expanding the ability of states to easily tailor **Medicaid** benefits to fit within state budget constraints. Furthermore, that Congress ensures that federal participation rate formulas or block grants to the states are not biased against a state like Utah and adjust for inflation and population growth. Listed below are key Medicaid considerations.

- The structure of mandatory vs. optional Medicaid benefits has reverse incentives for independent self-determined living for individuals with disabilities. The opportunity to receive care and supports while remaining in one's home or community is limited currently by severity of disability, intensity of need, and persistence on a waiting list to be able to access waiver services; however, if the same individual is willing to reside in an intermediate care facility (ICF) away from home and one's routine of community life, then they are guaranteed access to services. ICF services are more costly and it is a disservice to Utah's individuals with disabilities, their families and communities to limit the choices for an independent life that is not only enriching for the person, but allows them to contribute more richly to society.
- Utah's population health outcomes would also be largely strengthened with greater parity of access to mental health and substance use disorder treatment services. Substance use disorders are a significant contributing factor in child welfare cases. The current opioid epidemic, if left unchecked, has the potential to result in significant familial dysfunction and increased child welfare costs in states for years to come. Notwithstanding the human costs of the opioid crisis, the loss of productivity, tax revenue, and the increased costs of incarceration and addiction will have significant impact on the state's economy.
- Historic guidance from the federal Centers for Medicare and Medicaid Services (CMS) led Utah's Office of Recovery Services (ORS) to view Medicaid as the payer of last resort. However, recent regulatory rule 45 CFR 303.31, from the federal Office of Child Support Enforcement (OCSE) directs that Medicaid is now considered acceptable coverage for children, even when private coverage may be available from the noncustodial parent or other third party. Utah recovers over \$25 million a year from private insurance and cost avoids \$150 million due to the pursuit of private insurance third party liability. Unless there is a change to the recent OCSE rule or different guidance from CMS, these efforts to mitigate costs to Medicaid will evaporate. Which in turn further limits the state's beneficiaries that can be served with Medicaid dollars.
- Congress should consider legislation that would allow individuals "aging out of" Juvenile Justice Services (JJS) custody the same access to benefits provided to young adults leaving the foster care system. One specific service is Independent Living Medicaid from ages 21 to 26.
- Additionally, the extension of Medicaid benefits for youth in JJS custody between the ages of 18 and 21 would strengthen Utah's outcomes for the continuity of treatment and recovery supports. These avoid disruption in services which often results in escalating health care needs and also has an impact upon their employment ability and housing stability.

Lastly, the existing limitation on **information sharing in 42 CFR** is a hindrance to efficiently and effectively treating substance use disorders as a health care matter. Congress should amend 42 CFR to greater align with HIPPA allowing for more integrated care and record keeping. Substance use

treatment records could be treated like psychotherapy notes that have extra protection inside of HIPPA, while lifting restrictions that keep substance use disorders from being included in healthcare.